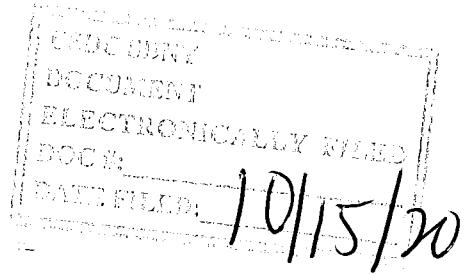


UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
TYRONE HOUSTON,  
Plaintiff,

v.

MICHAEL CAPRA, Individually, and as  
superintendent of Sing Sing Correctional  
Facility; S. HENTON, Individually, and as  
deputy superintendent for health services for  
Sing Sing C.F.; C. VASQUEZ, Individually,  
and as a Nurse Administrator for Sing Sing  
C.F.; ANTHONY ANNUCCI; ANNE MARIE  
MCGRATH; JOHN MORLEY; STEPHEN  
MAHER; JEFF MCKOY; RUTH BROWN;  
LEON A. PRALATOWSKI; SAMONE L.  
DINKINS; CAMPBELL, Individually, and as  
prison guard Sgt. for Fishkill C.F.; BAILEY,  
Individually and as prison guard for A Block  
(OIC relieve) for Sing Sing C.F.; ORTIZ  
Individually, and as Prison Guard for Sing Sing  
C.F.; VALEZ; C.O. ROBERT CIMMINELLI;  
Q. QUICK; SALLY A. REAMS; LEROY  
FIELDS; STEPHEN URBANSKI;  
LIEUTENANT PERKINS,  
Defendants.  
-----X



Copies Mailed/Faxed 10/15/20  
Chambers of Vincent L. Briccetti

**ORDER**

20 CV 2135 (VB)

On October 13, 2020, the Court received a letter from plaintiff requesting leave to file a sur-reply and to submit "newly discovered evidence." (See Doc. #59).

Plaintiff's request for leave to file a sur-reply is GRANTED. Plaintiff's sur-reply shall be no longer than 10-pages in length, double-spaced, and typed in 12-point or larger font. Plaintiff's sur-reply shall be filed by no later than November 12, 2020. The Court will not extend this deadline absent exceptional circumstances.

Additionally, plaintiff seeks the opportunity to submit newly discovered evidence as part of his sur-reply. The Court reminds plaintiff that the submission of evidence in response to a motion to dismiss is improper, because the only issue is whether the complaint states a claim for relief. See, e.g., Cumis Ins. Soc., Inc. v. Citibank, N.A., 21 F. Supp. 1100, 1104 (S.D.N.Y. 1996). For the Court to consider matters outside the complaint in deciding the motion to dismiss, it would need to convert defendants' motion into a motion for summary judgment. See Kopec v. Coughlin, 922 F.2d 152, 154-55 (2d Cir. 1991). The Court declines to do so at this time. Plaintiff's request to submit newly discovered evidence is DENIED.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore in forma pauperis status is denied for the purpose of an appeal. Cf. Coppedge v. United States, 369 U.S. 438, 444-45 (1962).

Chambers will mail a copy of this Order to plaintiff at the address on the docket.

Dated: October 15, 2020  
White Plains, NY

SO ORDERED:

A handwritten signature in black ink, appearing to read "Vincent Briccetti", written over a horizontal line.

Vincent L. Briccetti  
United States District Judge